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HELP FOR VICTIMS
AND WITNESSES OF
CRIME



Office of the Staff Judge Advocate
Yokota Air Base, Japan
DSN: 225-9934



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VICTIM AND WITNESS HANDBOOK

PREAMBLE

The Victim and Witness Protection Act of 1982 was enacted for the protection and assistance of crime victims and witnesses. Without the cooperation of victims and witnesses, the military justice system could not function effectively. The people who work in and support the military justice system at Yokota Air Force Base will ensure that victims and witnesses receive due consideration, are extended authorized assistance, are treated with dignity and courtesy, and are subjected to minimum interference with personal privacy and property rights. Subject to available resources, operational commitments and military exigencies, Air Force personnel in the military justice process will work to ease the physical, psychological and financial hardships suffered by victims of crimes investigated by the Air Force.

What This Handbook is About

This handbook is intended to provide information concerning the protection and assistance of victims and witnesses, to inform them about the availability of emergency medical care and human services programs, and to inform them of the steps in the military justice process and their roles therein. Commanders, law enforcement personnel, AFOSI agents and supervisors who believe a military member, dependent or Air Force employee is a victim or witness of a crime should refer the individual to the Base Legal Office, 374 AW/JA, Building 315, Unit 5078, APO AP 96328, Yokota Air Base, Japan. The telephone number is 225-9934.

DEFINITIONS

Victim

A victim is a person who suffers direct or threatened physical, emotional or financial harm as the result of an offense. "Victim" includes the immediate family of a minor who is a victim and includes the immediate family of a homicide victim.

Witness

A witness is a person who participates in a Department of Defense (DOD) criminal investigation or proceeding for the purpose of providing information or evidence concerning an offense within the investigative jurisdiction of the DOD component. When the witness is a minor, this term includes the minor's parents or any person having legal custody. This term does not include alleged co-conspirators, accomplices

or other principals of the offense. A victim of a crime will normally also serve as a witness.

Serious Offense

A serious offense involves personal violence or attempted or threatened personal violence, for which a maximum period of confinement of one year or more would be authorized under the Manual for Courts-Martial, or an offense involving the destruction or permanent loss of property of a value greater than \$100.

INTRODUCTION

One of the responsibilities of citizenship or being in the Air Force, for one who has knowledge about the commission of a crime, is to serve as a witness at the criminal trial or a hearing held in connection with the criminal prosecution. In the military justice system, criminal trials are called "courts-martial." The military justice system cannot function without the participation of witnesses. The complete cooperation and truthful testimony of witnesses are essential to the proper determination of guilt or innocence in a criminal case.

The Legal Office at Yokota AB has taken several steps to make the participation by victims and witnesses of crimes more effective and meaningful. One of those steps is the preparation of this handbook. Hopefully, it will provide the answers to many of your questions and will give you sufficient information to understand your rights and responsibilities. Thank you for your cooperation and your service as a witness. The sacrifice of time and effort that being a witness requires is greatly appreciated. If you have any questions, please ask the Judge Advocate assigned to the case.

INFORMATION & ASSISTANCE

The Legal Office at Yokota AB prosecutes Air Force members who have committed crimes punishable under the Uniform Code of Military Justice. You are a victim of such a crime or are being asked to serve as a witness in a court-martial, or both. This handbook is designed to help you understand the military justice system and your role in the process. The people of the United States, and the Air Force in particular, are depending on you and others who know something about a crime. Only with your help can the Air Force have a fair and effective system of justice which brings out all the facts against and for members alleged to have committed a crime.

Threats & Intimidation

It is a federal offense to threaten, intimidate, harass, or mislead a witness in a criminal proceeding or investigation. When appropriate, steps will be taken to protect you from intimidation or similar threats. If anyone threatens you, or if you feel that you are being harassed because of your contribution to the case, immediately notify the Judge Advocate in charge of the case or the Air Force agency investigating the offense.

<u>Agencies at Yokota AB</u>	<u>Telephone</u>
Base Legal Office	225-9934
Security Police Investigations	225-7025
Office of Special Investigations	225-7910

Restraining Orders

In the military, commanders can order persons under their command to do certain things or to abstain from doing certain things. These lawful orders can have the same effect as restraining orders. Violations of lawful orders are punishable under the UCMJ. If you are threatened or intimidated, your Judge Advocate can obtain an order from that person's commander. Even if you are unsure whether or not the threat is real, talk to your Judge Advocate as soon as possible.

Witness Fees

If you are not a federal government employee, you will receive a witness fee for each day that you are required to attend a court-martial, including time spent waiting to testify. Out of town witnesses receive reimbursement for certain travel expenses in addition to their daily witness fee. At the conclusion of your testimony, you will complete a witness voucher, Standard Form 1175, to make a claim for your fees. The NCOIC, Military Justice, Base Legal Office, will help you file your witness voucher. A check for all fees will be mailed to you when the case is over or you can be paid in cash by the Base Finance Office. If you are a federal government employee, you receive your regular salary while testifying, notwithstanding your absence from your job, and you will not collect a witness fee in addition to your salary.

Victim and Family Input into Legal Decisions

If you are a victim or an immediate family member of a victim of a serious offense, the Judge Advocate in charge of the case will wish to obtain your views about legal decisions made before, during and after the court-martial. Any adverse impact on you and your family will also be explored in detail. Your opinions will be given due consideration throughout the case. Please be frank, thorough and totally honest when completing the questionnaire concerning these matters provided by the Base Legal Office. Also, please indicate the areas about which you would like further information.

Return of Property Used as Evidence

Sometimes law enforcement officers take and store property belonging to victims or witnesses as evidence in a court-martial. Examples are stolen property and property at a crime scene. If your property is being held as evidence and you feel that you would like to regain your property before the court-martial case is over, contact the Judge Advocate in charge of the case in the Base Legal Office. Sometimes arrangements can be made for early release of your property. This will require a determination as to the value of the production of your property at court-martial. In any case, your property held for evidence will be safeguarded and returned as expeditiously as possible. If a delay in the return of your property is required, the Judge Advocate in charge of the case will explain the reasons for retaining your property and estimate when it can be returned to you. You may file a claim with the Claims Office, Base Legal Office, for property that the Air Force is holding as evidence. The Claims Office, Base Legal Office, will determine if the claim is payable. You can contact the Claims Office at 225-9935.

Recovering Losses: Restitution & Civil Litigation

Often crime may mean a real financial loss to the victim. Perhaps you have had cash or valuable property stolen and not recovered, property damaged, medical expenses not covered by the Air Force, or a loss of income because you could not work. If any of these things have happened to you, please see if you have insurance which will cover the loss. If you have no insurance or only partial coverage, contact the Claims Office, Base Legal Office, 225-9935, about filing a claim with the Air Force. If you are a foreign national, or a U.S. citizen not in Japan pursuant to the Status of Forces Agreement, and a U.S. Armed Forces member has injured you personally or damaged your property by a criminal act and is unable to compensate you for the injury or damage, you may be able to file a claim for compensation with the Japanese Defense Facilities Administration (DFAA). The Claims Office can also provide you information on filing a DFAA Claim. There are two other possible ways to recover your losses - restitution or civil litigation.

Restitution

When an offender returns stolen property, or otherwise provides compensation for a victim's losses, he or she has made what is called "restitution" to the victim. The Manual for Courts-Martial does not authorize restitution as a part of an accused's sentence in a Court-Martial. However, the Convening Authority can choose to suspend the sentence on the condition that the convicted individual make restitution to any

victims. Likewise, in cases where the offender receives Article 15 punishment, the offender's commander can suspend punishment on the condition that the offender make restitution. Often, in the hope of receiving a lighter sentence, an accused may agree to or will sometimes make restitution voluntarily. You should cooperate fully with the Judge Advocate in charge of the case by giving information regarding the impact the crime had on you as the victim. The Judge Advocate will then have an accurate picture of the appropriated restitution in your case.

Civil Litigation

A victim may try to recover losses by a civil lawsuit against the accused. Such a private lawsuit is completely separate from the court-martial. A Judge Advocate cannot represent you in a civil lawsuit. If you wish to pursue the matter in a U.S. district or state court, then you will have to contact a civilian attorney in the U.S. The Base Legal Office has addresses and phone numbers of attorneys in each state. The Base Legal Office also has the phone numbers and addresses of bar associations in each state. These bar associations can refer you to attorneys who specialize in particular areas of the law. If you wish to pursue a civil matter in the Japanese court system, then you will have to obtain the services of a Japanese attorney. The Base Legal Office has a list of local attorneys that you can contact. Also, occasionally the Base Legal Office sponsors a Japanese attorney to provide free advice on Japanese law. You can call the Base Legal Office at 225-9934 to check the next date that the Japanese attorney will visit Yokota AB. It is recommended that you get an appointment to meet with this attorney well in advance. Despite pursuing civil litigation, it can be difficult to recover civil damages because an accused typically does not have many assets.

Other Special Needs

As a victim or witness, you may have questions about transportation, the location of the Base Legal Office and courtroom, food service, lodging, parking, child care, availability of interpreters/translators, what to expect in court and what time to appear. The Judge Advocate assigned to the case, as the Victim/Witness Assistance Officer, Base Legal Office, 225-9934, has assembled information for you on these subjects or will provide assistance in obtaining these services for you. You should feel free to ask him or her for assistance.

Interviews by Prosecutors & Defense Lawyers

Even though you may have been asked for your cooperation in this case by the prosecution, witnesses do not belong to either side of a criminal case. It is proper for the defense lawyer to contact you about your testimony in this case. The Base Legal Office requests that you cooperate fully with both sides, prosecution and defense. In an

interview with a representative of the government or defense, you should always do your very best to tell "the truth, the whole truth, and nothing but the truth."

Making Statements

If you give a statement to an investigator or lawyer for the government or the defense, you do not have to sign the statement. Any statement that you make during an interview, even if not signed, may be used to try to challenge or discredit your testimony in court if your court testimony differs from your first statement -- whether written or oral. If you decide to sign the statement, make sure you read it very carefully first and correct any mistakes. You may have a copy of your statement if you wish.

Discussing the Case with Persons Outside the Legal Office

The Judge Advocate in charge of the case may discuss various aspects of the case with you, both for your information and to prepare you for testimony if necessary. Anytime you have an interview with an attorney or investigator for the defense, please let the Judge Advocate in charge of the case from the Base Legal Office know about the interview.

You may discuss the case with anyone you wish. However, it is not always a good idea. For example, an accused may be under orders not to talk to you about the case as a condition of liberty prior to trial and might be placed in pretrial confinement if he or she does so. Remember, if an accused approaches you and you find this upsetting, contact the Judge Advocate in charge of the case immediately. Since you are a potential witness, you are encouraged not to discuss the case with members of the press because the rights of the government and the accused to a fair trial could be jeopardized by pretrial publicity. Also, after you have testified in court you should not tell other witnesses about your testimony until after the case is over, and do not ask other witnesses about their testimony.

Hearing & Trials are Subject to Scheduling Changes

There is sometimes more than one kind of court hearing in a case in which you might be asked to testify. It is difficult to schedule hearings at a time convenient for everyone involved. A hearing may require the presence of witnesses, law enforcement officers, the attorneys for the government and the defense, the judge or investigating officer or magistrate, as well as the accused. Therefore, when a time and place is set for a hearing, please be there promptly. If you know in advance that you might have difficulty in making an appearance, let the Judge Advocate in charge of the case know so that an attempt may be made to adjust the schedule. If you have been sent a subpoena, you

should know there are serious penalties if you do not obey that formal order to appear. Despite the efforts of everyone concerned, once in a while a hearing does not take place on schedule. Sometimes a hearing or court-martial must be postponed. The Base Legal Office will notify you promptly of any scheduling changes which affect your attendance.

Victim Notification of the Accused's Status

If a victim or witness of a serious offense requests it, the Base Legal Office will notify them in advance, if possible, of the apprehension of the accused, the pretrial release of the accused, and the accused's trial or entry of a guilty plea and sentencing proceedings. Please provide the Judge Advocate assigned to the case with a current address or telephone number and which of these events you would like notice of on the form provided by the Base Legal Office.

Separate Waiting Areas During Court-Martial Proceedings

At courts-martial and other proceedings, victims and witnesses will be afforded the opportunity to wait in an area of the Base Legal office separate from the accused or other witnesses. Separate waiting areas are appropriate when necessary to avoid embarrassment, coercion, or similar emotional distress. If the case includes numerous witnesses and you would like a separate waiting area, please ask the Judge Advocate in charge of the case.

Notifying Employers or Creditors

Upon request of a victim or witness, the Judge Advocate in charge of the case will take reasonable steps to inform an employer of the reasons a victim or witness must be absent from work. In appropriate cases, a victim or witness who is subjected to serious financial strain as a direct result of crime or cooperation in the investigation or prosecution of a crime, will be assisted by the Base Legal Office in explaining the situation to creditors. If you need assistance in these areas, notify the Judge Advocate in charge of the case.

Any request for release of investigative reports or other documents must be processed in accordance with the Freedom of Information Act, AFI 37-131. Please contact 374 MSS/MSID, 225-8644, if you have such a request.

EMERGENCY MEDICAL CARE AND OTHER SERVICES

If you are a victim of a crime, there are many services available on base and in the local community. The following list includes some services which may be available to you.

MEDICAL ASSISTANCE

CONTACT: Emergency Room - 225-7740
Family Practice (general appointments) - 225-8864
Pediatrics - 225-3560
Physical Exams - 225-3541
Mental Health - 225-3566
Dental Clinic - 225-7249
Physical Therapy - 225-7577
Family Advocacy - 225-3648
. CHAMPUS - 225-6485

FINANCIAL ASSISTANCE AND COMPENSATION

Financial Aid -

Emergency financial aid is sometimes available for military members.

CONTACT: Air Force Aid Society - 225-8725
American Red Cross - 225-7522, 7637, Emergency 223-6123

Stolen/Vandalized Property -

Compensation may be available for stolen or vandalized property.

CONTACT: Base Legal Office, Claims Section, 225-9935

Civilian Witnesses (non-government employees) -

Civilians who testify in a court-martial are usually entitled to witness fees and possibly travel reimbursement.

CONTACT: Base Legal Office - 225-9934

Victims of Crime -

U.S. states and territories have various legislation and compensation measures enacted to assist crime victims. The Base Legal Office has the addresses and phone numbers of the appropriate offices to contact in each state and territory regarding victims rights and compensation. The legal office also has application forms from many states for requesting compensation.

WITNESS AND VICTIM PROTECTION

Military Community -

If there is an immediate threat, the offender can be apprehended and/or given an immediate order to not have any contact with you.

CONTACT: Security Police - 225-7200, AFOSI - 225-7910, or the unit commander or first sergeant.

There is a military program for all personnel in need of reassignment, see Threatened Person Assignments, AFI 36-2110, attachment 12.

CONTACT: AFOSI - 225-7910

When spouse or child abuse is involved, spouse and family can be placed in Billeting.

CONTACT: The unit commander or first sergeant, Family Advocacy - 225-3648, or Mental Health - 225-3566.

Civilian Community -

Some immediate protection may be available through the Security Police - 225-7200, or AFOSI - 225-7910, regarding on-base activity. Otherwise, the Japanese Police should be contacted.

CONTACT: Security Police - 225-7200

Fussa Police (Security Police Liaison) - 225-8705

Family Advocacy can assist in protection for U.S. Civilian Employees and their dependents who are victims of abuse.

CONTACT: Family Advocacy - 225-3648

COUNSELING AND RELATED SERVICES

Victims can receive treatment and counseling on base through Mental health.

CONTACT: 225-3566

Victims can receive also receive a variety of counseling through other base agencies.

CONTACT: Family Advocacy - 225-3648

or, Base Chaplains - 225-7009; (Non-duty Hours) 225-9901

or, Family Support Center - 225-8725

Off-Base Counseling -

Japanese and Foreign Nationals can receive bi-lingual counseling locally in Fussa.

CONTACT: Chaplain Matsumoto, Base Chapel - 225-7009, or (0425) 52-8299

Off-Base Shelters -

Shelters for women and children can be arranged off-base

CONTACT: Chaplain Matsumoto, Base Chapel - 225-7009, or (0425) 52-8299

THE COURT-MARTIAL PROCESS

You are entitled to understand what is happening in the case in which you are involved. There are many steps to a court-martial and you may be contacted by the Judge

Advocate assigned to the case or the accused's lawyer during various stages of the military justice process. The Judge Advocate in charge of the case is called trial counsel. The accused's lawyer is called defense counsel.

Article 15 Punishment - Minor Offenses

When there has been a violation of a particular article of the Uniform Code of Military Justice (UCMJ), the accused's commander discusses the offense and surrounding circumstances with a Judge Advocate in the Base Legal Office. Minor offenses are often not considered serious enough to warrant court-martial. However, a minor offense may warrant non-judicial punishment under Article 15 UCMJ. Depending on all the circumstances, an Article 15 proceeding is between the accused and his or her commander and does not always involve imposition of punishment. If an accused does not wish to resolve the matter by Article 15 proceedings, he or she can demand trial by court-martial.

Preferral: Accusing Someone of a Crime

When the offense is too serious for disposition by an Article 15 proceeding, or if the accused demands a trial by court-martial, the accused's commander signs a charge sheet accusing him or her of breaking the law by violating a particular article of the UCMJ. The accused's commander then pursues either a special court-martial or a general court-martial by forwarding the charge sheet and other papers to the Court-Martial Convening Authority. At Yokota AB, the 374th Airlift Wing Commander is the convening authority for special courts-martial, and the Headquarters 5th Air Force Commander is the Convening Authority for general courts-martial. After discussing the offense and surrounding circumstances with the Staff Judge Advocate, the Convening Authority decides to either prefer preliminary court-martial charges against the accused or recommend that the case be handled by less severe means.

Pretrial Confinement

If it is reasonably foreseeable that the accused will flee from prosecution or engage in serious criminal misconduct, and lesser forms of restraint are inadequate, the accused's commander will place him or her in pretrial confinement (jail) to await trial. The decision is reviewed by a neutral and detached military magistrate who may need your testimony.

Article 32 Investigation: Hearing after Preferral of Charges

If the charges are serious enough to be preferred to a general court-martial (preferred by the 5AF Commander), then an Article 32 Investigation into the charges is required. A general court-martial is the most serious kind of court-martial and is the military equivalent of a felony court. An Article 32 investigation is like a grand jury proceeding in the civilian justice system. Article 32 of the UCMJ provides that no charges can be sent to a general court-martial without an impartial investigation. The Article 32 investigator will examine the charge sheet and case file and call witnesses for sworn testimony. The accused and his or her lawyer have a right to be present when evidence is reviewed or witnesses testify. They also have the right to cross-examine government witnesses, and to call witnesses for the defense. The accused has a right to testify but is not required to do so. At the end of the Article 32 investigation, the investigator recommends to the Convening Authority whether the evidence supports each of the charges. An Article 32 investigation is not required for charges preferred to a special court-martial.

Who Decides Whether a Court-Martial is Eventually Held

The 374th Airlift Wing Commander, the Convening Authority for special courts-martial, or the Headquarters Fifth Air Force Commander, the Convening Authority for general courts-martial, decides after preferral whether a case eventually goes to an actual court-martial. If the Convening Authority believes that the initial preferred charges are warranted, then the charges will be what is called “referred” to a court-martial. If the charges are referred to a court-martial, the Convening Authority's decision is written on the charge sheet along with the number of the court-martial convening order. This order lists the names of the court members (jury). The Convening Authority decides who will be court members based on what he or she knows about them as fair and mature officers. The trial counsel (prosecutor) is a Judge Advocate from the Base Legal Office. The accused is provided a Judge Advocate, usually the Area Defense Counsel, free of charge. The accused can also have a civilian lawyer at his or her own expense. The military judge is assigned from the USAF Trial Judiciary Office, Pacific Circuit here at Yokota Air Base. The accused decides whether to be tried by a judge alone or by a court with members. The accused, if enlisted, has a right to demand enlisted members on the court.

Referral: Taking the Charges to a Court-Martial

Once the charges have been referred to a court-martial, they are formally served on the accused. Once the charges are served, the trial can begin any time after three to five days, depending on the type of court-martial. If the case is complicated, the trial may be delayed in order to give adequate time to prepare and arrange for witnesses.

Pleas of the Accused

At trial, the accused will either plead not guilty, guilty, or guilty of some lesser included offense. A guilty plea, if knowingly made, is the strongest form of proof known to the law. The accused may plead not guilty to all of the charges and rely on his or her right to have the government prove guilt beyond a reasonable doubt. After the pleas, if any issue of guilt remains, the jury, if any, is questioned to ensure their impartiality, and are instructed on their duties.

The Court-Martial (Trial) Process

The trial and defense counsel may make opening statements about what they believe the evidence will show. Then the trial counsel (prosecutor) calls witnesses and brings in evidence to try to prove guilt. The defense counsel is given a chance to cross-examine these witnesses. Defense then gets a chance to call their own witnesses and present their evidence. They do not have to do anything and the accused does not have to testify. If the accused chooses not to testify, his or her silence cannot be used against him or her. If the accused does testify, anything he or she says can be used against him or her and the trial counsel can cross-examine the accused just like any other witness called for the defense. The accused may elect to give an unworn statement not subject to cross-examination by anyone. After the defense finishes putting in evidence and calling witnesses, the trial counsel can put on rebuttal witnesses or evidence. Rebuttal is offered to contradict evidence presented by the defense.

After both sides have put on all the evidence, the lawyer for each side makes a closing argument. The trial counsel tries to convince the court that he or she put on enough evidence to prove guilt beyond a reasonable doubt. Then the defense counsel tries to show that the prosecutor has not met the burden of proof. The lawyers also summarize the evidence before the court and argue how they believe the law applies to the facts. The trial counsel also is allowed a short rebuttal argument after the defense closing argument because the government carries the burden of proof. If there is a jury, the judge then instructs the court members on their responsibilities and advises them of the applicable law. The court members deliberate in private and decide by secret written ballot whether the accused is guilty or not guilty of the charges.

Findings Deliberation

Deliberation on findings by the judge or court members may take several minutes or it may take hours. If the accused is found not guilty of the charges, the trial is over. If the accused is found guilty of any of the charges, whether by a guilty plea or findings, the sentencing part of the trial begins immediately.

Sentencing: What Evidence is Considered

In the civilian criminal justice system, the sentencing proceeding may be held days or even weeks later. In the military justice system, the prosecution proceeds immediately by putting on evidence of the severity of the crime and its impact. This evidence is called matters in aggravation. Besides this evidence and testimony, the trial counsel will also put in evidence of the accused's prior misconduct, such as previous court convictions (if any), Article 15's, Letters of Reprimand, or other similar disciplinary actions. The prosecution is also required under the rules to admit the accused's Enlisted Performance Reports or Officer Performance Reports into evidence.

Defense Mitigation & Extenuation

After matters in aggravation are submitted to the court by the trial counsel, the defense counsel will submit mitigation and extenuation evidence. This is evidence which tends to show the accused is a good person who should not receive the maximum punishment authorized, or the offense committed by the accused was not severe under the circumstances. The strict military rules of evidence are more liberal in this part of the trial. Usually, the defense can present whatever information they believe the court members or judge need to decide on a fair punishment. The accused may testify under oath, make an unsworn statement, say nothing at all, or the defense counsel can make a statement on the accused's behalf. If the accused testifies under oath, the trial counsel can cross-examine him or her.

Sentencing Argument and Deliberation

After the defense puts on evidence in extenuation and mitigation, the trial counsel can put in rebuttal evidence. Next, the lawyers make their arguments as to the appropriate sentence. If there is a jury, the judge instructs them on their responsibilities and the law in determining a sentence. The court then closes to decide the proper punishment.

SPCM Maximum Punishments

In a special court-martial, the maximum punishment possible is a bad conduct discharge (BCD), six months confinement (jail), forfeiture of two-thirds pay per month for six months, and reduction in rank to the lowest enlisted grade, Airman Basic.

GCM Maximum Punishments

In a general court-martial, the accused can receive the authorized maximum punishment for any offense. In any court-martial, it is possible that no punishment will be imposed. Lastly the military judge advises the accused of his or her post-trial and appellate rights. Except for sentences of the death penalty, a dismissal (for officers), a bad conduct

discharge, or a dishonorable discharge, the Convening Authority may order all parts of a sentence to be carried out in his or her initial action in the case.

Confinement

If the sentence includes confinement, usually the accused is taken directly to jail. The accused can ask to have the confinement postponed or deferred to a later date, but this is rarely approved and then only for the most compelling reasons. If the confinement is six months or less, then he or she will probably serve his or her jail time in a local military confinement facility in Japan. If the sentenced confinement is for more than six months, then he or she will be transferred from Japan within 10 days of the Convening Authority's final action on the case to either the military confinement facility at Miramar, California or Fort Leavenworth, Kansas. The accused and the defense counsel may submit allegations of legal error and clemency matters to the Convening Authority. The Convening Authority, can suspend all or part of the sentence or approve the sentence as adjudged and designate the place of confinement. The Convening Authority cannot increase the sentence.

Appellate Review of Certain Sentences

If the sentence, as approved, includes the death penalty, a dismissal, a bad conduct discharge, a dishonorable discharge, or confinement for one year or longer, and the accused has not waived or withdrawn his or her right to appellate review, the case will automatically be appealed to the Air Force Court of Criminal Appeals. After that, a petition for review can be filed with the U.S. Court of Appeals for the Armed Forces. If the case is reviewed by the U.S. Court of Appeals for the Armed Forces, the accused can file a petition for review with the United States Supreme Court. If there is no automatic appeal, the accused can file an appeal or review request with The Judge Advocate General under Article 69, UCMJ. In the military review process, the accused will have free defense counsel provided if requested.

Non-Court Alternatives to UCMJ Offenses

Not all cases go to trial by court-martial. The accused can ask to be administratively discharged or allowed to resign instead of going to trial. Such requests are not usually approved. When they are approved, they generally involve an under other than honorable conditions (UOTH) discharge. This is the worst type of administrative discharge and is similar to a bad conduct discharge.

Any questions you may have about what happens before, during or after a court-martial in your case should be addressed to the trial counsel at the Base Legal Office at 225-9934.

PREPARING TO TESTIFY

As a witness, you have important duties with respect to the side for whom you appear, yourself, and our system of justice. In order for a court or board to make a correct decision, they must have all the evidence put before them truthfully and accurately by witnesses. Your lack of cooperation or failure to come forth as a witness could possibly cause an unjust result in a case.

All the people involved in the case know your time is valuable and that you have other things you would rather be doing than testifying in court. Every attempt will be made to use as little of your time as possible. There may be unavoidable delays in getting you on and off the witness stand, but be patient. You have not been forgotten.

Your Statements versus Court Testimony

Frequently witnesses, who have already given oral or written statements before the trial or hearing, are called to testify. You may wonder why you should be inconvenienced by going to court when they could use your previous statement instead. The judge may not allow the statement into evidence because the law requires the witness to appear in court, tell his or her story under oath, and be subject to questioning by all parties. Therefore, you are still needed in court, even if you have already given a statement.

Sometimes people called as witnesses believe they do not know any relevant facts about the case and, therefore, should not be called. You may know something very important, even though it may seem insignificant to you. Remember, the lawyers investigate the case thoroughly and know what testimony is necessary and relevant. If your testimony is not essential, you will not be called.

Subpoenas

If you are a civilian witness and subpoenaed to a court-martial, do not ignore the subpoena. It is an order of the court and must be obeyed. Failure to appear in court in accordance with the subpoena could place you in contempt of court. If you have any questions or problems about appearing, contact the attorney or trial counsel who sent you the subpoena.

HELPFUL HINTS BEFORE YOU TESTIFY IN COURT

If you are contacted by the attorney for either side for an interview prior to the trial, cooperate with him or her. Failure to cooperate prior to trial could cause you embarrassment and delay at trial. These rules will be helpful to you in court:

Go Over the Facts

Before you appear in court, go over the facts of the case in your mind. It may help to refresh your memory. Before you testify, try to picture the scene, the objects there, the distance and exactly what happened so you can recall the facts more accurately when asked.

Neat Appearance

Be neat in your personal appearance. You are being judged not only by what you say but how you look. You will first be sworn in. When you take the oath, say "I do" clearly. On the witness stand, get comfortable, sit straight and look around to familiarize yourself with the surroundings. Visit the courtroom in advance, if possible.

Tell the Truth

In testifying, the first rule is to tell the truth. Do not answer questions with half-truths. Do not try to judge whether an answer is going to help or hurt one side or the other. Do not let your personal feelings about who should win or lose color your testimony. Avoid giving your opinion about the guilt or innocence of the people involved. That is the job of the court. As a witness, your only duty is to tell it like you saw it, nothing more, nothing less.

Speak So You Can Be Heard

Answer the questions clearly and loudly enough so everyone can hear you. Do not talk too fast or too slowly. Do not mumble or slur your words. Look at the court panel and address your remarks to them so they will be able to hear and understand what you have to say. Do not nod your head for "yes" or "no" answers.

Be Polite

Use military courtesy if you are a military member. Use "ma'am," "sir," and "your honor." Be serious at all times. The courtroom is not the place to be humorous.

Do Not Memorize Your Testimony

It will sound rehearsed and lack the ring of truth. Speak in your own words.

Listen to the Questions Carefully

If you do not hear a question, ask that it be repeated. If you do not understand a question, ask that it be rephrased in different words.

Do not Guess at an Answer

If you do not know the answer to a question, simply say that you do not know. A trial is not like a television quiz show where you must come up with some kind of an answer.

Answer Directly

Answer directly and simply only the question asked you. Do not volunteer information. Do not exaggerate or make overly broad statements that you may have to correct. Give positive, definite answers when at all possible. If a question cannot be truthfully answered with a "yes" or "no," you have a right to explain the answer. Try to give just the facts. Do not give your conclusions or opinions unless specifically asked to do so.

Correct Mistakes in Your Testimony

If you make a mistake in answering a question, correct it immediately. If your answer was not clear, clarify it immediately.

Objections Made by the Attorneys

If one of the lawyers objects, or if the judge speaks, stop talking immediately. Do not try to complete your answer until told to continue. Do not argue with the attorney asking the questions. Keep your temper and always be courteous.

Cross-Examination

While testifying on cross-examination, do not look at the attorney who called you for help in answering the question. You are on your own. If the question is improper, the attorney will object, and the judge will rule on it. It is important, however, that you listen to the objection so that you understand why it is being made. If you are asked whether or not you have talked to anyone about your testimony before coming to court, be sure and answer "yes" if you have. There is nothing wrong with discussing the facts with the attorneys, security police, or investigators before the trial.

Dates, Distances, Time, or Speed

If the question is about distances, time, or speed and your answer is only an estimate, be sure you say it is only an estimate. Beware of suggestions by attorneys as to estimates and do not agree with their estimates unless you independently arrived at the same estimate.

Do's & Don'ts

Be natural; be yourself. Do not try to be someone you are not. If you relax, tell the truth, and remember you are talking to other people, you will get along fine.

After you have testified, do not tell other witnesses what was said during testimony until after the case is over. Do not ask other witnesses about their testimony.

Do not discuss the case or your testimony within the hearing of the court members (the jury). The only time the court members should hear from you is while you are testifying in the courtroom.

If you have any questions about testifying or problems related to the case, please contact the trial counsel assigned to the case at the Base Legal Office at 225-9934.

CONCLUSION

We hope this handbook has answered many of your questions as to how the military justice system operates and your rights as a victim and/or your role as a potential witness. Victims/Witnesses have important responsibilities in this process and their full cooperation is essential if the system is to operate fairly and effectively. The Base Legal Office and the Commander of the 374th Airlift Wing at Yokota Air Base thank you for your help and cooperation. If you have any questions or problems related to the case and need assistance, please contact the Judge Advocate assigned to this case. He or she can be contacted at the Base Legal Office, Building 315, Yokota AB, extension 225-9934.

WILLIAM F. PHILLIPS, Lt Colonel, USAF
Staff Judge Advocate

REFERENCE LIST

GENERAL REFERENCES

1. Victim and Witness Protection Act of 1982, 42 USC 10601-10605
2. Victim's Rights and Restitution Act of 1990, 42 USC 10606, 10607
3. DOD Directive 1030.1

SOURCES OF APPLICABLE SERVICES

1. Emergency Medical Services
USAF Med Treatment - AFI 41-115
Waiver of Charges for Evidentiary Reasons - AFI 41-101
2. Social Services

Family Advocacy Program - AFI 40-301
Air Force Aid Society Financial Assistance - AFI 36-3109
American Red Cross - AFI 36-3105
3. Restitution

USAF Claims Program - AFI 51-502
Article 139, UCMJ - AFI 51-502
Pretrial Agreement - RCM 705c(2)(C)
4. Victim Counseling/Treatment/Support

Chaplain Services - AFI 52-101
Mental Health Services - AFI 44-102
Family Support Center - AFI 36-3009

REASONABLE PROTECTION FROM A SUSPECTED OFFENDER

1. Security Police - AFI 31-201
2. AFOSI - AFI 171-101
3. Threatened Person Assignments - AFI 36-2110, Attachment 12